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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 76th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 23 April 1991, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.76/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued) (agenda item 4)

Initial report of Panama (continued) (CAT/C/5/Add.24)

1. Mr. SAENZ FERNANDEZ (Panama), replying to questions raised by members of the Committee at its previous meeting, said that, in Panama, criminal proceedings were undertaken in three phases. At the initial stage, the procedure was to establish whether an offence had been committed and, if so, the appropriate authorities to investigate it and the remedies available to the accused. The second stage involved investigation into the background of the crime and was undertaken by the Public Prosecutor's Office, while a hearing before a court constituted the third phase.

2. Persons accused of an offence were entitled to be brought before the competent authorities within a period of 24 hours, and must, when formally charged, be informed of their rights. They were entitled to the services of a defence counsel, paid for and appointed by the State if they were without means. Accused persons could, however, defend themselves in person if they so wished.

3. With regard to evidence, the Constitution and the Penal Code provided that no one was compelled to testify against himself or a close relative and that evidence obtained in disregard of that requirement should be set aside.

4. Pre-trial detention was the responsibility of the Public Prosecutor's Office and should not normally exceed two months' duration. However, if the offence was of a serious nature or if repeated offences were involved, it could be extended to four months, provided that the remedy of habeas corpus was available. As a safeguard against arbitrary detention by the State, the Penal Code made provision for compensation, on the grounds of material or moral injury, and for the setting aside of cases after a period of one year's detention.

5. Criminal legislation in Panama prohibited solitary confinement or detention incommunicado and affirmed the principle of presumption of innocence. It also required the authorities, when investigating an offence, to take account of the accused person's social and psychological background. Defendants who alleged ill-treatment when in custody could request a medical examination by a doctor of their own choosing and could submit evidence of such ill-treatment in the court proceedings.

6. With regard to the legal definition of torture, it was up to the judge to determine, on the basis of expert advice, what in any given case constituted physical or mental pain or suffering amounting to torture. It should also be pointed out that evidence obtained by means of torture must be disregarded in criminal hearings.

7. Since 1983, the Panamanian Penal Code had contained provisions on offences against the integrity of the person, with particular reference to violations involving unnecessary suffering inflicted by public officials. In all cases, the decision as to guilt was made by the officiating judge on the basis of

expert advice. If the person concerned was found to have been responsible for cruel, inhuman or degrading treatment, an application on his behalf for bail could be denied. Public officials found guilty of such offences faced sentences of 10 to 15 years' imprisonment.

8. Under the Penal Code, a judge could determine civil liability in the course of criminal proceedings in order to compensate a person subjected to torture or to make restitution to his family. Such a remedy did not, however, rule out the possibility of an application for compensation under civil law.

9. Extradition was governed by the provisions of Act No. 5 of 16 June 1970, which reproduced the text of article 3 of the Convention prohibiting any State party to expel, return or extradite a person where there were substantial grounds for believing that he would be in danger of being subjected to torture. Articles 2508 (XII) and 2510 (IV) of the Code of Criminal Procedure specified that extradition might be refused where the request was contrary to the provisions of the law or of any treaty to which Panama was a party. Where extradition was refused, Panama could bring the foreign national to trial for the crime, since article 4 of the Political Constitution of the Republic stated that Panama was bound by the rules of international law, and the principle of territoriality was further developed in articles 12 to 15 of the Penal Code. If a country having no relations with Panama wished to extradite one of its citizens, under article 2505 of the Code of Criminal Procedure, it could submit the request via a friendly country, as provided for in the Convention. In such cases, the person concerned had the right to appeal within 30 days to the Supreme Court of Justice, which would then study the person's objections and, where they were deemed to be grounded, refuse the request for extradition.

10. One day was set aside, on or around the 15th of each month, for visits to prisons by circuit judges, examining magistrates and municipal judges. Judges were required to visit detention centres and report on the progress of each prisoner's case. Where the judge found evidence that a prisoner had been ill-treated, the case would be referred to the Forensic Medicine Institute and the prison director would be required to submit a report.

11. In reply to the question whether Panama had two separate constitutions, a Political Constitution of the Republic and a National Constitution, he said that the two terms were synonymous. The correct technical term was "Political Constitution of the Republic", but the more general term "National Constitution" could be applied appropriately in the case of a unitary State such as Panama.

12. Mr. VELASQUEZ (Panama), replying to questions on the situation in the prisons after 20 December 1989, said that, following the United States invasion of Panama, many prisoners had been housed in detention camps. The Panamanian Committee for Human Rights, which he himself had chaired, had insisted on being permitted to visit the camps in order to ensure compliance with the Geneva Conventions. At no time had it heard any allegations of ill-treatment or torture. It had exerted pressure on various international bodies to ensure that the prisoners were processed as rapidly as possible.

One specific problem was that the disbanding of General Noriega's "Dignity Battalion" had resulted in a marked increase in crime among the civilian population and had led to severe overcrowding in the prisons.

13. There were no political prisoners in Panama. A number of former political figures had been charged, but the offences in question were common crimes committed while they had held political office, not political crimes. The Panamanian Committee for Human Rights was endeavouring to ensure that trials were expedited. He stressed that, even where an amnesty or pardon was granted, generally to political prisoners, detainees were not exempted from civil liability. In an endeavour to reduce pressure on the prisons, some 350 ordinary offenders had been released. However, there was no question of an amnesty or pardon for those guilty of human rights violations.

14. Mr. BONOME RIVERA (Panama) said that the legislation governing the national prison system dated back to 1941 and had not been substantially amended since. The new democratic Government was concerned about the widespread abuses that had prevailed within the prison system during the 20-year period of dictatorship from 1968. It had undertaken to restructure the national police force: Cabinet Council Decree No. 38 of 10 February 1990 had abolished the former Defence Force, establishing a national police force directly responsible to the executive organs, whose actions were subject to the Constitution and the laws of the Republic and whose tasks included ensuring respect for human rights and support for democratic institutions. It was worth noting that not all personnel from the former Defence Force were involved: some units had been incorporated into the new force and were being used to train police in preventive action and crime suppression within the community.

15. Although the new democratic Government had been in office for only a short time, it had organized 96 3-month transition courses in 1990 for almost half the national police force. The priorities of those courses had been human rights, police procedures, community relations, police ethics and first aid. The Technical Judicial Police was soon to be under the control of the Public Prosecutor's Office and was headed by a civilian Director-General. In 1990, the Technical Judicial Police had conducted a number of operations to combat drug trafficking, the results of which had benefited the international community as a whole. Three hundred and fifty-nine persons had been arrested and more than 3,900 kgs of cocaine confiscated, as compared with 25 kgs in 1985-1986. The police force was gradually winning the confidence of the community and coming to perform its role efficiently. Particular emphasis was being placed on training the Technical Judicial Police to adopt a scientific approach.

16. As part of efforts to update the 1941 legislation, measures were being taken to ensure that all prisoners were detained under the United Nations Standard Minimum Rules for the Treatment of Prisoners. Many shortcomings still had to be overcome, particularly with regard to overcrowding. Technical teams composed of social workers, psychologists and criminologists were needed. Prisoners had to be properly classified within the prisons. Paradoxically, there had actually been fewer persons in prison in 1989. However, that fact was attributable to tacit acceptance by the military authorities of the time that many crimes would go unpunished. That was no

longer true under the new democratic Government. In 1990, amnesties and pardons for those convicted of political crimes and reductions in sentences for 350 ordinary offenders had alleviated the problem of overcrowding.

17. Questions had been asked about the relative percentages of convicted and other prisoners in Panama's prisons. At the start of 1990, less than 10 per cent of the prison population had been convicted prisoners and almost 91 per cent had been prisoners on trial or awaiting trial. According to the most recent statistics, the number of remand prisoners and prisoners on trial had now fallen to 81 per cent and it was hoped that it would drop further to 60 or 50 per cent within one year as a result of the application of Act No. 3 of 1990.

18. No specific programmes were envisaged for drug traffickers. The Government's policy was to try to ensure that they were detained under conditions of maximum security, but without prejudice to their human rights.

19. Political prisoners were held in the best possible conditions and there were only two persons in each cell. They received all the benefits granted to ordinary offenders. It should be noted that they received medical treatment whenever necessary and could be visited by their families.

20. His Government was fully aware of the importance of training for members of the staff of detention centres and, in 1990, had sent warders, inspectors and supervisors to the prison training school at the Reform Centre in San José, Costa Rica.

21. The Government of Panama had taken a number of practical steps to ensure the dignity of individuals detained in prison. It had requested $5.4 million for the construction of a new detention centre and it was mindful of the problems existing in the prison system and was making every effort to ensure that detainees were not mistreated.

22. Mr. SAENZ FERNANDEZ (Panama), said, first of all, that there was no capital punishment in Panama. Secondly, it was of course possible that the Act which had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment could be superseded by another Act. However, in accordance with the provisions of article 31 of the Convention, denunciation would not become effective until one year after the necessary written notification had been received by the Secretary-General.

23. The CHAIRMAN said that he would welcome information on the situation with regard to torture in Panama and the measures that had been taken to deal with allegations of torture.

24. Mr. SAENZ FERNANDEZ (Panama), referring to the situation existing in Panama before 1989, said it was clear that military dictatorships did not respect human rights. Persons who had made allegations of torture had disappeared and judges who had heard the complaints had been transferred elsewhere.

25. In 1990, the Public Prosecutor's Office had processed the complaints filed and had referred them to the courts. It was hoped that the courts would hand down the relevant sentences before the end of the current year. As a result of an investigation carried out by the Public Prosecutor's Office, a Higher Circuit Court had recently handed down a judgement against Mr. Manuel Antonio Noriega and other persons involved in human rights violations.

26. The police force in Panama had been receiving training since 1989. Some staff members of detention centres had been sent to Costa Rica and had received instruction in police ethics, criminal procedures and the rights of citizens.

27. With regard to the prohibition of torture, he said that confessions obtained by torture could not be invoked as evidence in any proceedings. Physical and psychological torture were both prohibited. Individuals were examined by physicians to determine whether they had been subjected to any acts of torture. However, it must be borne in mind that some cases of torture might not be denounced.

The meeting was suspended at 4.55 p.m. and resumed at 5.05 p.m.

28. Mr. SORENSEN (Country Rapporteur) thanked the Panamanian delegation for all the work it had put into its oral presentation at the previous meeting and its lengthy answers to the Committee's questions. He nevertheless noted that the report itself had been only seven pages long and it was difficult for the Committee to assimilate information given orally. Some questions had, moreover, still not been answered. Democracy had only recently come to Panama and the reforms which had been promised, while well underway, had not yet been completed.

29. Accordingly and because States parties should not be encouraged to submit a short report and supplement it with a lengthy oral statement, he considered that the Committee should request the Panamanian Government to submit additional information in writing within a year's time giving details of reforms such as the bills currently being adopted by the Panamanian Parliament. The Committee could invite a delegation from Panama to speak before it again on that occasion.

30. Ms. DIAZ PALACIOS said that the Committee now knew far more about Panama's implementation of the Convention than it had done before the delegation's oral presentation and replies. She welcomed the general trend of Panama's attempts to restructure its legal system, the police force and the prison system. The delegation's replies had clarified many of the details contained in the report, but it was important that all the information provided by Panama should be included in a single written document so that the Committee could continue to study it. She had been impressed by the quality of the information provided and the commitment and assiduity displayed by the Panamanian delegation.

31. The CHAIRMAN pointed out that Panama was due to submit another report - its first periodic report - in September 1992. If the Committee asked for a supplementary report to be submitted in April of that year, as Mr. Sorensen had suggested, it would have two reports before it in the space of a few months. He suggested that Panama need not submit a supplementary report, but try to submit its first periodic report on time, taking into account the Committee's remarks and the questions which still remained to be answered. It should also endeavour to give full details of the measures taken - both in its legislation and in practice - to implement each article of the Convention. Naturally, if the first periodic report was not submitted on time, the Committee might decide to request a supplementary report after all.

32. The Chairman's suggestion was adopted.

33. Mr. VELASQUEZ (Panama) thanked the Committee for its attention and for its praise of Panama's oral presentation and replies. He had been particularly pleased to address the Committee as an official representative of his country: under the previous régime, he had been the chairman of a non-governmental organization and had, in fact, addressed the Committee in that capacity in September 1989 on the subject of alleged human rights violations committed under General Noriega.

The public meeting rose at 5.20 p.m.